



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

**CASE OF LUGANSKAYA v. UKRAINE**

*(Application no. 29435/04)*

JUDGMENT

STRASBOURG

14 December 2006

**FINAL**

*14/03/2007*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Luganskaya v. Ukraine,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr V. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 20 November 2006,

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 29435/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms Raisa Andreyevna Luganskaya (“the applicant”), on 2 August 2004.

2. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Y. Zaytsev.

3. On 5 December 2005 the Court decided to communicate the complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 concerning the non-enforcement of the judgments in the applicant's favour to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1938 and lives in the town of Novogrodivka, Donetsk region, Ukraine.

5. On 21 April and 13 June 2003 the Novogrodivskyy Town Court ordered the applicant's former employer, the Novogrodivska Mining Company No. 1/3 (*Шахта 1/3 „Новоградівська”*) – a State-owned

enterprise - to pay the applicant 5,010.72<sup>1</sup> Ukrainian hryvnias (“UAH”) and UAH 4,211.75<sup>2</sup> in salary arrears and other payments (*Рішення Новогродівського міського суду Донецької області*).

6. On 5 May and 21 July 2003, respectively, the Novogrodivsky Town Bailiffs' Service (*Відділ Державної виконавчої служби Новогродівського міського управління юстиції*) instituted enforcement proceedings in respect of the above judgments.

7. The Novogrodivska Mining Company was reorganised and became a structural subdivision of the Selidovvugillya Mining Company. As the latter thereby became the debtor, the enforcement proceedings were transferred to the Selidivsky Town Bailiffs' Service (*Відділ Державної виконавчої служби Селидівського міського управління юстиції*).

8. In February 2004 the applicant instituted proceedings in the Novogrodivsky Town Court against the Novogrodivsky Town Bailiffs' Service, seeking compensation for failure to enforce the judgments in her favour. On 11 March 2004 the court rejected her claim, finding no fault on the part of the Bailiffs' Service. It held that the judgment could not be enforced due to, *inter alia*, the moratorium on the forced sale of property belonging to State enterprises introduced by the Law of 29 November 2001. On 5 July 2004 the Donetsk Regional Court of Appeal upheld the judgment of the first instance court. The applicant appealed against these judgments in cassation. The parties did not submit any further information about these proceedings.

9. In September 2004 the applicant instituted proceedings in the Selidivsky Town Court against the Selidivsky Town Bailiffs' Service, seeking compensation for failure to enforce the judgments in her favour. On 14 October 2004 the court rejected her claim, finding no fault on the part of the Bailiffs' Service. On 14 February 2005 the Donetsk Regional Court of Appeal upheld the judgment of the first instance court. The applicant appealed against these judgments in cassation. The parties did not submit any further information about these proceedings.

10. On 14 September 2004 the applicant received UAH 3,996.65<sup>3</sup>. According to her, the rest of the amounts awarded remains unpaid.

## II. RELEVANT DOMESTIC LAW

11. A description of the relevant domestic law can be found in *Sokur v. Ukraine* (no. 29439/02, § 17-22, 26 April 2005).

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1. At the material time around 890.89 euros (“EUR”).

2. At the material time around EUR 691.10.

3. Around EUR 672.

## THE LAW

12. Relying on Article 13 of the Convention, and Article 1 of Protocol No. 1 the applicant complained about the lengthy non-enforcement of the judgments given in her favour. These Articles provide, insofar as relevant, as follows:

### Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

### Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ....”

13. The Court finds that the applicant's complaint about the lengthy non-enforcement of the judgments given in her favour also required examination under Article 6 § 1 of the Convention which reads as follows:

### Article 6 § 1

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...”

## A. Admissibility

14. The Government submitted no observations on the admissibility of the applicant's complaints.

15. The Court concludes that the applicant's complaint under Articles 6 § 1 and 13 of the Convention about the delay in the enforcement of the judgments of the Novogrodivskyy Town Court raises issues of fact and law under the Convention, the determination of which requires an examination of the merits. It finds no ground for declaring this complaint inadmissible. For the same reasons, the applicant's complaint under Article 1 of Protocol No. 1 cannot be declared inadmissible.

## B. Merits

16. The Government maintained that the judgments in the applicant's favour had been enforced in part. They further maintained that the responsibility of the State in this situation had been limited to the organisation and proper conduct of enforcement proceedings and that the length of the enforcement proceedings had been caused by the critical financial situation of the debtor company and the energy sector of the Ukrainian economy in general. The Government contended that the Bailiffs' Service had performed all necessary actions and could not be blamed for the delay. The regularity of the enforcement proceedings in the present case was confirmed by the domestic courts. The Government argued that the State could not be considered responsible for the debts of its enterprises and that the State annually allocated substantial amounts from its budget to cover part of disability allowances and other compensatory payments to the workers in the mining industry.

17. The applicant disagreed.

18. The Court notes that the judgments in the applicant's favour have not been enforced for more than three years and five months and for more than three years and three months, respectively.

19. The Court recalls that it has already found violations of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 in cases like the present applications (see, *Sokur v. Ukraine*, judgment, cited above, §§ 30-37; *Shmalko v. Ukraine*, no. 60750/00, §§ 55-57, 20 July 2004).

20. Having examined all the materials submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

21. There has, accordingly, been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

22. The Court does not consider it necessary in the circumstances to rule on the same complaint under Article 13 of the Convention.

## VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Damage

24. The applicant claimed EUR 1,778 in respect of pecuniary damage and EUR 3,500 in respect of non-pecuniary damage.

25. The Government maintained that the applicant had not substantiated her claims.

26. The Court considers that the Government should pay the applicant the outstanding debt<sup>1</sup> in settlement of her pecuniary damage. As to the remainder of the applicant's just satisfaction claims for pecuniary damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the Court considers that the applicant must have sustained non-pecuniary damage, and, deciding on an equitable basis, awards her EUR 1,300 in this respect.

### **B. Costs and expenses**

27. The applicant did not submit any claim under this head within the set time-limit; the Court therefore makes no award in this respect.

### **C. Default interest**

28. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## **FOR THESE REASONS, THE COURT UNANIMOUSLY**

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that it is not necessary to rule on the applicant's complaint under Article 13 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the judgments' debts still owed to her, as well as EUR 1,300 (one thousand three hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

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1. Last known to the Court to be UAH 5,225.82 (currently around EUR 850.43).

- (b) that the above amount shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
- (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK  
Registrar

Peer LORENZEN  
President